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September 26, 2016

SEP 29 2016

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7015-0640-0002-3404-2985**

Board of Commissioners  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

***RE: Notice of Violations and Intent to File Suit Under the Clean Water Act***

Dear Board of Commissioners:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. §1365(a), §505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occurred and the registered agent of the alleged violator.

Derron Thibodeaux hereby places the Port of Oakland (hereafter "the Port") on notice that following the expiration of sixty (60) days from the date of this NOTICE he intends to bring suit in Federal District Court against the Port for its continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under §505(a)(1) of the Clean Water Act, 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the incidents of non-compliance listed below.

**BACKGROUND**

Pursuant to §301(a) of the Clean Water Act, 33 U.S.C. §1311(a), the EPA and the State of California, the Port continues to have serious ongoing violations of state and federal discharge standards which are having a significant adverse impact on environmental and public health. The Clean Water Act regulates the discharge of pollutants into navigable waters of the United States. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter which has been issued a permit pursuant to the National Pollution Discharge Elimination System (NPDES) to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the

authorized exception to the 33 U.S.C. §1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. §1311(a). Private parties may bring citizens suits pursuant to 33 U.S.C. §1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. §1311(a), 33 U.S.C. §1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the Federal Environmental Protection Agency (EPA) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus, comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this case is the Regional Water Quality Control Board (RWQCB).

The Port, owns and operates sewage transmission pipes within the Port of Oakland servicing Buildings 803 and 804 and running adjacent to 19<sup>th</sup> Street. The transmission lines have a chronic history of inflow and infiltration into the system, as well as cracks in the piping in the system, releasing raw and untreated sewage underground into the soil, thereby releasing untreated wastewater and raw sewage into the ground water and San Francisco Bay. All of which has occurred within the last five-years, all in direct violation of the state and Federal Clean Water Acts.

The Port also has a history of major discharges from the facility's collection system, caused by ruptured pipelines due to inflow and infiltration during periods of heavy rainfall and because the Ports freshwater delivery lines also leak causing a back of head pressure which in turn, forces the leaked raw effluent into Bay waters. The facility's collection system inflow and infiltration problems have caused discharges of raw sewage and treated effluent to surface waters in violation of the prohibition of Clean Water Act by discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act §301(a), 33 U.S.C. §1311(a).

The Port sewage collection lines are over 100 years old and in need of immediate replacement.

The Port and the City of Oakland are currently under a Clean Up and Abatement Order issued by the RWQCB concerning the Former Oakland Army Base, Order Number R2-2004-0086, issued in October of 2004, for this same location.

Pursuant to §309(d) of the Clean Water Act, 33 U.S.C. §1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation, for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, Derron Thibodeaux will seek injunctive relief preventing further

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violations of the Clean Water Act pursuant to §505(a) and §505(d), 33 U.S.C. §1365(a) & (d), and such other relief as is permitted by law. Lastly, §505(d) of the Clean Water Act, 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

The violations of the Port, as set forth in this NOTICE effect the health and enjoyment of Derron Thibodeaux, and the residents who reside and work in the Port and the surrounding towns, as well as California residents who use the waters of the State of California and the United States previously identified in this NOTICE. These residents use the water resources for, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of these natural resources is specifically impaired by the Port's violations of the Clean Water Act.

Derron Thibodeaux has retained legal counsel to represent him in this matter. All communications should be addressed to:

Mark S. Pollock, Esq.  
Pollock & James, LLP  
1792 Second Street  
Napa, CA 94559  
Telephone: 707-257-3089  
Facsimile: 707-257-3096

Derron Thibodeaux believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter Derron Thibodeaux intends to file a citizen's suit under §505(a) of the Clean Water Act against the Port for violations at the facilities identified in this NOTICE.

During the 60-day notice period, Derron Thibodeaux is willing to discuss effective remedies for the violations noted in this NOTICE. However, if the Port wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. Derron Thibodeaux does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Sincerely,

POLLOCK & JAMES, LLP



Mark S. Pollock

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cc:

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
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Mail Code 1101A  
Washington, D.C. 20460

Alexis Strauss, Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
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Bruce H. Wolfe, Executive Officer  
California Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland CA 94612

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City of Oakland Public Works Department  
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